

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
PACIFICORP DBA UTAH POWER & LIGHT)	CASE NO. PAC-E-05-1
COMPANY FOR AUTHORITY TO INCREASE)	
ITS RATES FOR ELECTRIC SERVICE TO)	
ELECTRIC CUSTOMERS IN THE STATE OF)	ORDER NO. 29878
IDAHO.)	

Background

On January 15, 2005, PacifiCorp dba Utah Power & Light Company (PacifiCorp; Company) filed an Application for authority to increase the Company's general rates for electric service.

On June 13, 2005, a Stipulation (and Proposed Settlement) was filed by PacifiCorp, Commission Staff, the Idaho Irrigation Pumpers Association, Community Action Partnership Association of Idaho, Agrium, Inc., J.R. Simplot and Timothy J. Shurtz. Monsanto Company, an intervenor, did not sign the Stipulation, specifically objecting to Paragraph 9 of the Stipulation, a provision that addresses the tariff versus contract standard as it pertains to special contract customers and future service contracts.

On July 22, 2005, the Commission in final Order No. 29833 approved the Stipulation and Settlement with the exception of Paragraph 9. Reference IDAPA 31.01.01.276.

Petitions for Intervenor Funding

On July 28 and 29, 2005, Petitions for Intervenor Funding in Case No. PAC-E-05-1 were filed by the Idaho Irrigation Pumpers Association, Inc. (Irrigators; IIPA) and Community Action Partnership Association of Idaho (CAPAI). Reference *Idaho Code* § 61-617A; IDAPA 31.01.01.161-165. The Irrigators request \$38,197.40. CAPAI requests \$6,157.47. The Commission in this Order approves grants of intervenor funding for CAPAI in the amount of \$6,157.47 and for the Irrigators in the amount of \$21,780.03 pursuant to the Idaho Code and the Commission's Rules of Procedure.

Idaho Code § 61-617A and Rules 161-165 of the Commission's Rules of Procedure provide the framework for awards of intervenor funding. Section 61-617A(1) declares that it is the "policy of this state to encourage participation at all stages of all proceedings before the

Commission so that all affected customers receive full and fair representation in those proceedings.” Accordingly, the Commission may order any regulated utility with intrastate annual revenues exceeding \$3,500,000 to pay all or a portion of the costs of one or more parties for legal fees, witness fees and reproduction costs, not to exceed a total for all intervening parties combined of \$40,000.

Rule 162 of the Commission’s Rules of Procedure provides the form and content requirements of a petition for intervenor funding. The petition must contain: (1) an itemized list of expenses broken down into categories; (2) a statement of the intervenor’s proposed finding or recommendation; (3) a statement showing that the cost the intervenor wishes to recover are reasonable; (4) a statement explaining why the costs constitute a significant financial hardship for the intervenor; (5) a statement showing how the intervenor’s proposed finding or recommendation differed materially from the testimony and exhibits of the Commission Staff; (6) a statement showing how the intervenor’s recommendation or position addressed issues of concern to the general body of utility users or customers; and (7) a statement showing the class of customer on whose behalf the intervenor appeared.

The Petitions for Intervenor Funding of the Irrigators and CAPAI can be summarized as follows:

Irrigators

The Petition of the Irrigators conforms with the requirements of RP 162.

Itemized List of Expenses

The summary of expenses that the Irrigators request to recover is as follows:

Legal Fees:	
Eric L. Olsen: 70.9 hours at \$175	\$13,860.00
Costs:	
Long distance/postage	212.40
Travel:	0.0
Total Work and Costs:	<hr/> \$14,072.40
Consultant Anthony J. Yankel	
193 hours at \$125 per hour	\$24,125.00
Expenses:	
Travel, room and meals	0.0
Total Work and Costs:	<hr/> \$24,125.00
TOTAL FEES AND EXPENSES	<hr/> \$38,197.40

A detailed log of hourly charges is included for legal expense. Exhibit A, Attachment 1. A detailed log of consultant time is set out in Exhibit A, Attachment 2. Exhibit B is 30 pages of prepared and unfiled testimony. The Irrigators contend that the expenses and costs are reasonable in amounts and were necessarily incurred.

Statement of Proposed Findings

The Irrigators represent that their legal counsel and consultant fully participated in the case, actively reviewing the filing, preparing and reviewing data requests and responses, drafting direct testimony and participating in settlement discussions. The Irrigators were parties to the resulting Stipulation and filed comments in support. Because it was not known until late in the process that any party would propose settlement, and even later before one was reached, the Irrigators contend that they still had to substantially prepare for the presentation of their direct case before the Commission. The proposed findings or positions of the Irrigators are set forth in the draft direct testimony of Mr. Anthony Yankel. Reference Petition Exhibit B. The Irrigators, independently but concurrently with Staff, determined that PacifiCorp had inappropriately included the Monsanto special contract costs in this case, and the Irrigators' objection was noted in the Stipulation.

Statement of Financial Hardship

The Idaho Irrigation Pumpers Association, Inc. is an Idaho nonprofit corporation qualified under IRC Section 501(c)(5) representing farm interests in electric utility rate matters affecting farmers in southern and central Idaho. The Irrigators rely solely upon dues and contributions voluntarily paid by members, together with intervenor funding to support activities and participate in rate cases. The executive director, Lynn Tomanaga, is the only part-time paid employee, receiving a retainer plus expenses for office space, office equipment and secretarial services. Officers and directors are elected annually and serve without compensation.

The Irrigators contend that the legal and consultant fees and costs incurred in this case constitute a financial hardship to IIPA. The Irrigators currently have approximately \$12,392 in the bank. Accounts payable for legal and consultant fees and costs in this case total \$38,197.40, none of which have been paid.

Statement of Difference

In a rate case such as this that is settled before direct testimony has been filed or a complete record otherwise established, Irrigators state that it may not be apparent how their

positions would materially differ from the Commission Staff's position. However, as set forth in Mr. Yankel's draft testimony, the Irrigators pointed out (1) that PacifiCorp was not including known and measurable adjustments in its filing with respect to the actual irrigation curtailment, (2) that there were other ways of modeling how the curtailment credit can be derived based on straight forward cost of service principles and how the credit should be treated on a system or situs basis, (3) that there are problems with PacifiCorp's load research data from a quality perspective and from taking into account the curtailment that the Irrigators are providing under the load control program, and (4) that there were problems with allocation of costs associated with PacifiCorp's substations and primary distribution lines. Based on discussions with Commission Staff, the Irrigators believe that these issues were not going to be directly addressed by Staff in this case. Thus, the Irrigators believe that their positions and recommendations materially differed from those on which they believe Staff was going to focus, notwithstanding the fact that the vast majority of all parties' positions converged with the ultimate negotiation and presentation of the Stipulation.

Statement of Recommendation

The Irrigators contend that their participation addressed issues of concern to the general body of users or consumers on PacifiCorp's system. This case gave the Irrigators a chance to analyze the effects of actual curtailment in the context of what it accomplished for the jurisdiction as a whole and for the irrigators specifically. The curtailment of the irrigators reduces the summer coincident peak for the system and the Idaho jurisdiction, as well as for the irrigation class. A reduction of this summer peak, the Irrigators contend, not only benefits the irrigators as a class by reducing its demand, but it also reduces the Idaho system demand and the resulting system costs that are allocated to all PacifiCorp Idaho tariff customers. Continuation and expansion of the irrigation load control program, they contend, may also defer the building of additional generation plant as indicated in PacifiCorp's 2004 Integrated Resource Plan. Avoiding these types of costs, they contend, is also a benefit to all of PacifiCorp's Idaho tariff customers.

Statement Showing Class of Customer

The Irrigators contend that they represent the irrigation class of customers under Schedule 10.

CAPAI

The Petition of CAPAI conforms with the requirements of RP 162.

Itemized List of Expenses

A summary of expenses set forth in CAPAI Petition Exhibit A is as follows:

Costs:	
Photocopies	\$36.04
Telephone conferencing costs	21.63
Postage	15.80
Total Costs	<hr/> \$73.47
Legal Fees:	
Brad M. Purdy: 50.70 hours at \$120	\$6,084.00
Total Fees	<hr/> \$6,084.00
TOTAL EXPENSES	<hr/> \$6,157.47

Because of the speed at which this case was settled, CAPAI contends that its costs are considerably less in this proceeding than in Idaho Power's, Avista's, and United Water's general rate cases. CAPAI did not retain an expert witness in this case, but relied upon the expertise it has acquired in recent cases and, primarily, on its legal counsel for negotiation and consultation purposes. CAPAI contends that the costs and fees incurred are reasonable.

Statement of Proposed Findings

The proposed findings of CAPAI are set forth in the Settlement Agreement executed by the parties to the proceeding and approved by the Commission. Though the Settlement was executed prior to the filing of direct testimony, CAPAI, through extensive negotiations with PacifiCorp, contends that it addressed issues of importance to the general body of PacifiCorp's ratepayers, including the Company's overall proposed rate increase and the impact it would have on its low-income customers. PacifiCorp, CAPAI notes, did not propose changes to its Low Income Weatherization program in its direct case. Because of its involvement in this case and negotiations with PacifiCorp, the Company agreed to implement CAPAI's proposed changes to the Low Income Weatherization program as set forth in the Settlement. Were it not for the involvement of and negotiations by CAPAI, it is contended that these changes would not have been agreed to for consideration by the Commission.

Statement of Financial Hardship

CAPAI states that it is a nonprofit corporation overseeing a number of agencies who fight the causes and conditions of poverty throughout Idaho. CAPAI's funding for any given effort might come from a variety of different sources, including governmental. Many of the funding sources, however, are unpredictable. Some contain conditions or limitations on the scope and nature of work eligible for funding. The cost to CAPAI participating in this proceeding, it contends, constitutes a significant financial hardship. Without a reasonable award of costs, CAPAI contends that it would simply not be able to afford to participate and advance the interest of not only low-income ratepayers, but all ratepayers.

Statement of Difference

No other intervenor in this proceeding, CAPAI contends, represented, exclusively, the interests of the residential class, particularly the low-income sector of that class. CAPAI contends that it raised issues, and represented the interests of the general body of PacifiCorp's ratepayers. For example, it states that the Low Income Weatherization program for which CAPAI seeks increased funding reduces the consumption of electricity during PacifiCorp's summer peak season helping to defer the acquisition of marginally-priced resources and provides other system-wide benefits including the reduction of bad debt and arrearages.

CAPAI notes that Staff was not involved at all in the negotiations between CAPAI and PacifiCorp. There was no deliberate design accounting for this, it states, other than the fact that Staff has demonstrated a preference to allow CAPAI to make specific proposals and advocate them on its own without intervention other than to opine, after the fact, whether CAPAI's position falls within a range of reasonableness. Thus, it is fair to say, CAPAI contends, that where CAPAI takes specific positions on issues that Staff does not address in detail, there are significant differences between CAPAI and Staff for purposes of intervenor funding requests.

Statement of Recommendation

CAPAI states that its participation in this case addressed issues of concern to the general body of ratepayers. The problems facing PacifiCorp's low-income customers, it states, are societal problems that affect us all. Those problems, if not addressed, adversely affect all utility ratepayers in the form of increased collection and associated costs as well as the write-off of uncollectible accounts. These are costs, it states, that are passed on to all ratepayers. If low-income customers are enabled to lower their electric bills through a Company-funded

weatherization program, this decreases the likelihood that they will be unable to pay their bills and, consequently, the Company avoids incurring the aforementioned costs. Furthermore, CAPAI contends that because the Low Income Weatherization program is a DSM program, it represents a resource to the Company. It is in the best interests of PacifiCorp's ratepayers, it states, for the Company to have a healthy diversity of resources.

CAPAI states that it participated in settlement negotiations only to the extent that its participation was necessary to advance CAPAI's issues. CAPAI was informed that the Commission would reschedule the original prefile and hearing dates and, ultimately, schedule the hearing for the purpose of addressing the settlement. In order to minimize costs, and because it intended to participate in the hearing and testify in support of the settlement, CAPAI did not prefile any testimony regarding the settlement which it obviously supported as evidenced by its execution of the document and which it would justify at hearing. It was only after the prefile deadline for direct testimony was cancelled that CAPAI learned the Commission would not conduct a hearing after all. CAPAI points this out simply to establish that it did everything in its power to minimize costs, while leveraging its position in the interests of all ratepayers.

Consequently, though a hearing was never conducted, CAPAI contends that its participation in the case contributed materially toward shaping the scope and focus of the issues and evidence presented to the Commission and, thus, the ultimate outcome of this proceeding by offering a perspective not offered by any other party.

Statement Showing Class of Customer

To the extent that CAPAI represented a specific PacifiCorp customer class, CAPAI contends that it is the residential class.

Commission Findings

Submitted for Commission consideration are Petitions for Intervenor Funding filed by the Idaho Irrigation Pumpers Association, Inc. and Community Action Partnership Association of Idaho. Pursuant to *Idaho Code* § 61-617A(2) the Commission may order PacifiCorp to pay all or a portion of the costs of one or more parties for legal fees, witness fees and reproduction costs, not to exceed a total for all intervening parties combined of \$40,000 in any proceeding before the Commission. The combined total requested by the Irrigators and CAPAI in this case is \$44,354.87. We find that the Petitions for Intervenor Funding in this case

were timely filed and satisfied all of the other “procedural” requirements set forth in Rules 161-165 of the Commission’s Rules of Procedure.

Idaho Code § 61-617A includes a statement of policy to encourage participation by intervenors in Commission proceedings. The Commission determines an award for intervenor funding based on the following considerations:

- (a) A finding that the participation of the intervenor has materially contributed to the decision rendered by the commission; and
- (b) A finding that the costs of intervention are reasonable in amount and would be a significant financial hardship for the intervenor; and
- (c) The recommendation made by the intervenor differed materially from the testimony and exhibits of the commission staff; and
- (d) The testimony and participation of the intervenor addressed issues of concern to the general body of users or consumers.

We find that both Petitions satisfy the findings that we are required to make to justify an award.

Although the intervenor funding statute provides that intervenor funding may be awarded up to a total of \$40,000 in any particular case, we do not feel obligated to award the entire amount. This particular case was resolved by way of settlement and not litigation. We find that both Petitioners satisfy the substantive requirements of Commission Rule of Procedure 165. We find it fair, just and reasonable to award the total request of CAPAI in the amount of \$6,157.47 and find that the public interest is well served by such award. We find that CAPAI was professional and economical in the marshalling of its time and efforts.

The Commission is uncomfortable with awarding the full amount requested by the Irrigators in this case. While we appreciate the participation of the Irrigators in the case and recognize their contribution to the ultimate resolution of issues, the fact remains that this rate case was settled and not litigated. The draft testimony attached by Irrigators to their Petition for Intervenor Funding was not part of the record we relied on in making our decision in this case. The Irrigators have requested \$38,197.40. The unallocated amount of intervenor funding remaining is \$33,842.53. Of this amount, we find it fair, just and reasonable to award the Irrigators \$21,780.03.

The Commission finds that the intervenor funding awards to CAPAI and the Irrigators are fair and reasonable and will further the purpose of encouraging “participation at all

stages of all proceedings before the Commission so that all affected customers receive full and fair representation in those proceedings.” *Idaho Code* § 61-617A(1).

CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over this matter and over PacifiCorp dba Utah Power & Light Company, an electric utility, pursuant to the jurisdiction granted under Title 61 of the Idaho Code and the Commission’s Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

ORDER

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED that the Community Action Partnership Association of Idaho’s Petition for Intervenor Funding is granted in the amount of \$6,157.47. Reference *Idaho Code* § 61-617A. PacifiCorp is directed to pay said amount to CAPAI within 28 days from the date of this Order. PacifiCorp shall include the cost of this award of intervenor funding to CAPAI as an expense to be recovered in the Company’s next general rate case proceeding from the residential customer class.

IT IS FURTHER ORDERED that the Petition for Intervenor Funding filed by the Idaho Irrigation Pumpers Association, Inc. is partially granted in the amount of \$21,780.03. Reference *Idaho Code* § 61-617A. PacifiCorp is directed to pay said amount to the Irrigators within 28 days from the date of this Order. PacifiCorp shall include the cost of this award of intervenor funding to the Irrigators as an expense to be recovered in the Company’s next general rate case proceeding from the irrigation customer class.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

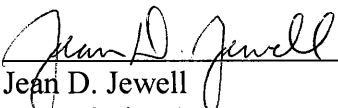
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 30th
day of September 2005.


PAUL KJELLANDER, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


DENNIS S. HANSEN, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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